



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201328036

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

APR 18 2013

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend:

Taxpayer A =

Taxpayer B =

Financial Institution C =

Account D =

Financial Institution E =

Company F =

Company K =

IRA G =

IRA H =

Amount 1 =

Amount 2 =

Dear :

This letter is in response to a request for a letter ruling, dated March 25, 2011, as supplemented by correspondence dated March 12, and April 24, 2012, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code

("Code"), regarding the distributions of Amount 1 and Amount 2 from IRA G and IRA H, respectively.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution of Amount 1 from IRA G. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to a failure by Financial Institution C or Financial Institution E to follow verbal instructions that Amount 1 be transferred into an IRA maintained with Financial Institution E. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Through her prior employment with Company F, Taxpayer A participated in a 401(k) plan. Taxpayer A's account balance in the 401(k) plan was eventually transferred to IRA G, an individual retirement account under section 408(a) of the Code, with Financial Institution C. Unhappy with the management of funds in IRA G, Taxpayer A decided to roll over her account balance to a different IRA sponsored by Financial Institution E. Taxpayer A represents that she was seeking an IRA with lower fees and better management. On January 16, 2011, Taxpayer A also represents that she communicated by telephone with an employee at Financial Institution C and directed that funds in IRA G (Amount 1) be transferred to an IRA with Financial Institution E. Prior to the transfer, the funds in IRA G were converted from Certificates of Deposit ("CD") to a money market fund in a non-IRA account. On January 19, 2011, Amount 1 was electronically transferred to Account D, a pre-existing non-IRA investment account maintained by Taxpayer A at Financial Institution E. Taxpayer A further represents that she was not aware that the funds from IRA G had been deposited into her pre-existing non-IRA account with Financial Institution E until August 30, 2011, when she received a notice from the Internal Revenue Service ("Service") that she failed to include Amount 1 in income on her tax return for 2011. Taxpayer A has not provided evidence of having completed a form or application to establish an IRA with Financial Institution E for the purpose of receiving the funds from IRA G.

Taxpayer B represents that he received a distribution of Amount 2 from IRA H. Taxpayer B also asserts that his failure to accomplish a rollover of Amount 2 within the 60-day period prescribed by section 408(d)(3) of the Code was due to a failure by Financial Institution C or Financial Institution E to follow verbal instructions that Amount 2 be transferred into an IRA maintained with Financial Institution E. Taxpayer B further represents that Amount 2 has not been used for any other purpose.

Through his prior employment with Company K, Taxpayer B participated in a 401(k) plan. Taxpayer B's account balance in the 401(k) plan was eventually transferred to IRA H, an individual retirement account under section 408(a) of the

Code, with Financial Institution C. Unhappy with the management of funds in IRA H, Taxpayer B decided to roll over his account balance to a different IRA sponsored by Financial Institution E. Taxpayer B represents that he was seeking an IRA with lower fees and better management. Taxpayer B alleges that on January 16, 20 , he also communicated by telephone with an employee at Financial Institution C and directed that funds in IRA H (Amount 2) be transferred to an IRA with Financial Institution E. Prior to the transfer, the funds in IRA H were converted from CD's to a money market fund in a non-IRA account. On January 19, 20 , Amount 2 was electronically transferred to Account D, a pre-existing non-IRA investment account, maintained by his wife, Taxpayer A, at Financial Institution E. Taxpayer B alleges that he was not aware that the funds from IRA H had been deposited into Taxpayer A's pre-existing non-IRA account with Financial Institution E until August 30, 20 , when he received a notice from the Service that he failed to include Amount 2 in income on his tax return for 20 . Taxpayer B has not provided evidence of having completed a form or application to establish an IRA with Financial Institution E for the purpose of receiving the funds from IRA H.

Amounts 1 and 2 were deposited into a pre-existing non-IRA account with Financial Institution E for which the Taxpayers received regular account statements. Taxpayers A and B are unable to document why Amounts 1 and 2 were not deposited into IRA accounts with Financial Institution E, or why they failed to notice this situation from their bank statements.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amount 1 and Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or

distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The Service has the authority to waive the 60-day rollover requirement for a distribution from a qualified retirement plan where the individual failed to complete a rollover to another qualified plan or IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated above in Revenue Procedure 2003-16. In this instance, however, the Service finds that the documentation and materials provided by Taxpayers A and B do not support their assertion that their failure to accomplish timely rollovers of Amounts 1 and 2 was due to a failure by Financial Institution C or Financial Institution E to follow verbal instructions that Amounts 1 and 2 be deposited into IRAs maintained with Financial Institution E.

Therefore, the Service declines to waive the 60-day rollover requirement with respect to the distributions of Amount 1 from IRA G and Amount 2 from IRA H.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (I.D. # ),  
at ( ) .

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: